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(3) It shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential.'' ' ''

The amendment was carried.

THE HON. SRI M. BHAKTAVATSALAM :—'' Sir, I move—

' *That the amendment be passed.*' ''

The motion was put and carried and the amendment was passed.

VI.—NON-OFFICIAL BILL.

THE MADRAS MARUMAKKATHAYAM (REMOVAL OF DOUBTS) BILL, 1955 (L.A. BILL NO. 12 OF 1955).

* SRI M. P. GOVINDA MENON :—'' Mr. Chairman, Sir, I move— 3-40 p.m.

' *That the Madras Marumakkathayam (Removal of Doubts) Bill*[a] *1955 (L.A. Bill No. 12 of 1955), as passed by the Assembly, be taken into consideration.*'

'' Sir, at the outset, I thank the Hon. Leader of the House for having given me this opportunity to move this non-official Bill to-day. This Bill, Mr. Chairman, is a very simple Bill. The necessity for it arose because there was a decision by Their Lordships in the Privy Council, as reported in I.L.R. (1948), Madras, 672. This decision according to some of us went against the ordinary custom, usage and the then law prevalent among the marumakkathayees of Malabar. That is why this Bill has to be introduced to-day. The case which went up to the Privy Council arose out of a dispute raised regarding the nature of the property which was the subject-matter of that suit, as it was considered a *Sthanam* property.

'' Now, there are two kinds of *stanams* in Malabar, and this has been established by a series of decisions of Courts based on the custom, usage, etc., of the Malabar district. Among some aristocratic royal families which were considered the chieftains or native rulers in those days, some seniormost male member or female member—in some families to the extent of four or five lines—were considered stanees, because they were karnavan of the tharwad in the district of Malabar. Some properties were also set apart for the sole enjoyment of these stanees, apart from the properties which had been enjoyed by them in common with the other members of the tharwad in which the stanees were born or from which the stanees got accession. That is one kind of stanam which was in practice in Malabar.

'' Another kind of stanam was that given by courtesy. The seniormost male member was considered a stanee. He was given the designation stanee, but in such a stanam no property was attached to the stanam as stanam. They were just the seniormost male members of the tharwad, but they had no independent property apart from the tharwad property, though they were styled

[a] Printed as Appendix VI on pages 454–455 infra.

as stanees. This custom is known very well in Malabar and is known to all those who are well-versed in the customs and usages of Malabar. For example, the Zamorin's family in Malabar got divided into 4 or 5 families and each section has got tharwad property; the seniormost male members of all the sections are designated as stanees and properties are separately attached to each.

"The stanees are just like the widows as known to Hindu Law. There are other examples also. The Chirakkal Raja was a very big chieftain; he is styled a stanee but he has no stanam property. He enjoys only the tharwad property with other members. But he was the karnavan of the tharwad.

"The case that went to the Privy Council was similar to the case where there was no separate property attached to the stanam. Our High Court, as reported in I.L.R. (1944), Madras, 550—I quote this because the case was tried by Judges familiar with the customs of Malabar—upheld the contention that there was no separate property attached to the so-called stanam. But unfortunately when the matter reached the Privy Council, Their Lordships—with great respect to them, though we are not now under the jurisdiction of the Privy Council—were not able to understand or appreciate the usages and customs in the district of Malabar. They were guided by the customs of Eastern countries and held that the person concerned, the seniormost member, had absolute right of the property which is called the stanam property. That is how the matter was decided by Their Lordships of the Privy Council. This has resulted in some sort of an upheaval in the district, some unnecessary litigations and some confusion and trouble in the families concerned.

"It had been decided that this doubt must be removed. That is why this Bill is styled 'Removal of Doubts' Bill. That is the necessity for this legislation. The eminent jurists of our State were consulted in this matter. I may inform the House in this connexion that the particular family had been under the management of the Court of Wards between 1895 and 1910 when there was no male member for being the stanee. At that time, they consulted the then eminent jurist, the late Sri P. R. Sundara Ayyar who afterwards became a Judge. There was no greater authority than he and even to-day there is no greater authority than he in matters relating to Malabar law. Whenever any questions relating to Malabar Law arose, he gave the authoritative opinion. So, Government then moved in the matter and on his opinion, it was held that it was not stanam property but a tharwad property and therefore the Court of Wards entered into management. So also, the present eminent jurists, Sri K. S. Krishnaswami Ayyangar, Sri Raja Ayyar and Sri M. K. Nambiar, were consulted in this matter. These eminent persons after going through all the elaborate records connected with the case, after taking into consideration the usage and customs referred to in all previous decisions and after going through the different Articles of the Constitution as to

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whether this Legislature was competent to undertake a legislation of this kind, gave their opinion to the Government and the papers are with the Government. They said that such a legislation was necessary; the doubt created by the Privy Council decision must be removed and that is why this Bill is brought before the Assembly and this House.

"I may also submit that the opinion among Members coming from Malabar is unanimous in regard to this Bill. As the Hon. Minister for Law put it in the other House, all the Malabar Members are unanimous in this demand and all subscribe to the demand that such a legislation is necessary. And so this Bill was passed unanimously by the Assembly—I may say this for the information of the House—and so there is no scope for difference of opinion. I even feel that, as this is a matter which has been settled by the representatives of the people concerned that a legislation of this nature is necessary, there is not much scope for discussion also.

"The provisions of the Bill are simple and there are only two clauses, one with three sub-clauses. To decide whether a property is a tarwad property or sthanam property there are principles well-known to the Malayalees. The first principle is to see whether there has been an intermingling of the sthanam and tarwad properties. It is a well-known test, known to Hindu Law to see whether there has been an intermingling of the properties. The second principle is to see whether the members of the tharwad had been receiving maintenance from the properties purporting to be sthanam properties as of right or in pursuance of a custom or otherwise. As regards this in the particular matter that went up to the Privy Council, in 1817 there was a suit for maintenance and it was decreed in 1818 and that custom had been followed till the present day. The third is the most important, and that is to see whether there had at any time been a vacancy caused by there being no male member of the tharwad eligible to succeed to the sthanam.

"These are the three well-known tests which are elaborated in this Bill to decide whether a particular property belongs to the sthanam exclusively or tarwad. I submit that this Bill may be passed unanimously as was passed in the other House. I hope our Members will give their full co-operation and support. Once more, I thank the Government for allowing me to move this Bill to-day."

* SRI P. P. UMMER KOYA :—"Sir, I second the Bill. This is intended to remove some misapprehensions and doubts in the Madras Marumakkathayam Act in regard to sthanams and sthanam properties. This Bill clearly gives the definition of the tharwad property in accordance with the age old custom of Marumakkathayam families of Malabar. Therefore, the whole of Malabar is unanimous in giving its support to this measure and I do hope that this House will give its unanimous support to this Bill." 3–50 p.m.

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MR. CHAIRMAN :—" Motion moved—

'That the Madras Marumakkathayam (Removal of Doubts) Bill, 1955 (L.A. Bill No. 12 of 1955), as passed by the Assembly, be taken into consideration.' "

DR. V. K. JOHN :—" Mr. Chairman, Sir, I must congratulate the mover and also the seconder of this Bill on the very able and eloquent manner in which they have advocated this Bill. I am not sure whether Members of this House who do not belong to Malabar know anything very much about sthanams. This Bill is called 'The Madras Marumakkathayam (Removal of Doubts) Bill, 1955.' It would have been more appropriate to call it 'The Malabar Abolition of Sthanams Bill'. If this Bill becomes law, there will be no sthanams at all in Malabar. As the hon. Member Sri Govinda Menon pointed out, most of the sthanam-holders were ruling Rajas in ancient times and certain properties were attached to the sthanams. They were impartible properties. I hope the mover of the Bill will himself admit that there are sthanam properties which are impartible estates and hon. Members of this House know what is meant by an impartible estate.

" Sir, this Bill purports to deal with certain properties which are purported to be sthanam properties. This Bill does not purport to abolish all the sthanams, but what it actually does is to abolish all sthanams because clause 2 provides notwithstanding any decision of Court, any sthanam in respect of which

(a) there is or had been at any time an intermingling of the properties of the sthanam and the properties of the tarwad, etc.

" Sir, in almost every sthanam, there are sthanam properties and tarwad properties. I do not understand what is meant by intermingling of properties—of immovable properties. Does it mean that if a sthanam-holder holds sthanam properties and tarwad properties, the sthanam properties become tarwad properties. How can one item of immovable property be intermingled with another item of immovable property? The expression 'intermingling' is unknown to law. I can understand private property being considered as joint family property and thus converted into joint family property. It is not intermingling of properties. Even if an item of property which is the private property of a manager of a joint Hindu family or of any member of a joint Hindu family is regarded by the holder thereof as joint family property it becomes joint family property according to law, but it is unknown to law how one property can be intermingled with another property. How can sthanam property intermingle with tarwad property? I can understand sthanam property being regarded as tarwad property. This is a different thing altogether, but the wording used in this Bill is unknown to law, namely, one property being intermingled with another, and the wording used there is 'or had been at any time an intermingling of properties of the sthanams and the properties of the tarwad'. I do not understand

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the meaning of the wording 'at any time'. Does the mover of the Bill consider an intermingling at one time and a separation at another time, of properties of the sthanam and the properties of the tarwad? I can understand some powder being mixed with some other powder or water being mixed with some powder, but I cannot understand how an item of immovable property being intermingled with another item of immovable property. This House is taking a very great responsibility in adopting a phraseology which is unknown to law, and the Courts will find it very difficult to interpret the wording used and find out the intention of the Legislature.

"Clause (*b*) refers to cases in which 'members of a tarwad have been receiving maintenance from the properties purporting to be sthanam properties as of right, or in pursuance of a custom or otherwise. So far as I know, the members of the family of the sthanam-holder, are maintained out of the income of the sthanam if there are no joint family properties. Can you find out one holder of sthanam properties in Malabar who does not maintain the members of his family. According to the Bill, these members need not be maintained as of right or in pursuance of the custom. If they are maintained otherwise also, sthanam properties become tarwad properties. The phraseology 'or otherwise' is very indefinite I must compliment the draftsmen of this Bill on the clever way in which the Bill has been drafted. If a sthanam-holder maintains members of his family for any reason whatsoever the sthanam properties become tarwad properties divisible among the members.

"Look at clause (*c*). This says that all sthanam properties in respect of which 'there had at any time been a vacancy caused by there being no male member of the tarwad eligible to succeed to the sthanam'. How can sthanam properties become tarwad properties divisible among the members of the family? The wording 'at any time' may be noted.

"I have no doubt if clause 2 is passed into law, all sthanams in Malabar will stand abolished and sthanam properties will be converted into tarwad properties which will become divisible among the members of the family. This is not clearing doubts, but abolishing sthanams. Sthanams are ancient institutions which have rendered great services to the public in running schools and other charitable institutions. I do not think there is any sthanam-holder in the whole of Malabar who does not render some service or other. The Legislature is a responsible body and it should not under cover of a Bill clearing doubts, abolish these ancient institutions. It is very wrong to abolish these institutions in this manner without serious consideration being paid to it. I can understand a Bill abolishing all sthanams as in the case of zamindaris. This is not the case here. I strongly protest against the manner in which these ancient institutions in Malabar are abolished.

" Then again the Legislature ought not to do the work which the Courts are expected to do. If there is a dispute whether an item of property is sthanam property or tarwad property, it is for the Courts to decide the question. The mover of the Bill refers to a Privy Council decision reversing the High Court's decision. This was in regard to certain properties and was not a case dealing generally with all sthanam properties. It is necessary to point out that the Subordinate Judge who decided the case in the first instance found that a particular property was sthanam property and therefore impartible property. The High Court reversed the decision on the facts of the case. The Privy Council reversed the High Court's decision. If a question arises regarding any other item of property, the Courts will decide on the facts of each case whether the item of property is sthanam property or tarwad property. According to this Bill, an item of property although actually sthanam property will be tarwad property if any of the conditions in clause 2 are satisfied and I do not think any item of
4 p.m. property can be got outside one condition or the other. The mover of the Bill said it was not the intention to abolish all sthanams. If that was the intention and the intention was to clear certain doubts, this is not the Bill for that purpose. The House will take a very great responsibility in passing this Bill and the effect of this Bill will be involved and prolong litigation and the closing down of many educational, charitable and religious institutions which are run by sthanam-holders.

" If literacy is very high on the West Coast, it is due to Churches and wealthy persons like the sthanam-holders who are mostly non-Brahmans. Formerly the temples, which were managed by Brahmans, did not care to educate non-Brahmans. To-day it is not the case."

SRI M. P. GOVINDA MENON :—" There was no time when Brahmans refused to educate non-Brahmans. Sometimes non-Brahmans have been educating Brahmans."

DR. V. K. JOHN :—" What I am saying is that temple money was not utilized for educational institutions and the reason given was that they did not want to educate Parayas and Pulayas, whereas Churches would allow anybody to come into the schools. This was also the case with educational institutions run by wealthy persons like sthanam-holders. The effect of this Bill will be that tomorrow every junior member of the family will ask for partition of sthanam property and these educational and other charitable institutions will have to be closed down. It is not in the public interests that this Bill should be passed into law. My objection to this Bill is that we are taking up this legislation very lightly. As responsible legislators, we should not yield to and we should not lightly take upon ourselves the function which a court of law should normally and legitimately be charged with. Secondly, under cover of this Removal of Doubts Bill, we are actually abolishing the sthanams which are ancient institutions. I should

therefore say that although this Bill has been very ably moved by my hon. Friend Sri Govinda Menon and seconded by Sri Ummer Koya and although this has been supported by members coming from Malabar and by the Government in the Assembly, it is my bounden duty to point out what we, as Members of this Legislature, should do and should not do. I have very serious doubts whether this Bill is not expropriatory in character against the Constitution and beyond the competency of this Legislature.''

* SRI A. GAJAPATHY NAYAGAR :—'' Mr. Chairman, Sir, before this Council a private Member has brought forward a Bill. He relies, in support of the Bill, on a decision by the Privy Council that sthanam property is impartible. My friend knows that the decision in a case is authority only for the facts of that case. This is a fundamental law. Here my hon. Friend, Dr. John, says that there are so many sthanams which are impartible and which are not impartible. The question before us is to consider whether on the moving of a resolution by a private Member, this Council will take sufficient authority to pass it into law. We have just heard two pleaders on this side. We have not 4–10 p.m.
heard both sides of the question. I say that this Council is entitled to have more authoritative information. I would have been very glad if this Bill has come at the Government level, or even at this stage, I would suggest a Select Committee be appointed to go into this question. Then the House will be in a position to know all the facts and we will be able to apply our minds and then pass the Bill. Otherwise we will be forswearing our responsibility. We should act in a responsible manner. I do not want to say that the Bill is good or the Bill is bad. But, I say that this Council is entitled to more information and more guidance and therefore I submit that the Bill may be brought forward at Government level so that we can pass it with more confidence. Or, at least if it goes to the Select Committee, then it will be possible to bring all the facts to light. Let not Sri Govinda Menon think that I oppose the Bill and let not Dr. John think that I support the Bill.''

* SRI E. H. PARAMESWARAN :—'' Sir, I thought that this was a most non-controversial Bill and that there would be no opposition. I for one felt very glad that this Bill was unanimously accepted by the Assembly. I also very much appreciate the attitude of the Government. The Hon. Law Minister said that if all the Members from Malabar agreed with regard to the principles of the Bill, the Government will be very glad to accept them. I have spoken to a number of persons about this Bill and I find complete unanimity about the need for such a Bill. I am not a lawyer and it will not be possible for me to give any legal opinion about the matter as my hon. friend, Dr. V. K. John, has done. Dr. John pointed out that the Legislature should not do away with ancient institutions. Ancient institutions all over the world have been crumbling and simply because some institution has been

existing from time immemorial, we should not say that the institution should be allowed to live. So many very ancient institutions have suffered and this is a matter on which all Malabar Members are agreed. We consider that there is absolute necessity for this Bill. Since the Legislative Assembly has also passed it, I would request all hon. Members to give their approval and see that the measure is passed."

* THE HON. SRI C. SUBRAMANIAM :—" Sir, the case for this Bill has been ably put forward by the Mover of the Motion and it is not necessary for me to explain further the scope of the Bill. But, Dr. John has raised certain fundamental points in considering this Bill and particularly, he stresses the aspect 'Here are ancient institutions which have been doing good to the society; are we to abolish these institutions?' I will take it for granted that this Bill abolishes those ancient institutions. Whether we should abolish the ancient institutions, Sir, is not a question for the Privy Council or any other court to decide. It is a question of where social justice is. There is the property held by one person under some sthanam as a sthani or as a head of a tarwad family. The question is whether a particular person should be absolutely entitled to the property or the entire family should have interest in the property. So, apart from what the state of law is and has been, it is open to this Legislature to consider whether the members of the family should have definite rights in this property and if we come to the conclusion as a matter of social justice that the members of the family should get rights in this property, then it will be not only within our rights but it is just that we pass this legislation. After a good deal of consideration, a Member has brought in this Bill and the Government also have gone into the entire aspect. The Government consider that there is nothing wrong in passing this Bill. That is why, they have given their support to this Bill even though it has not come as a Government Bill. This is not the stage at which the Government should bring in a statute of this sort because we are considering a comprehensive Bill. But, this Bill deals with a particular kind of sthanam property wherein the members have been receiving maintenance or in respect of which there has been a vacancy in the leadership of that property and considering that I do not think it is necessary to have any further discussion or refer it to a Select Committee. I would request hon. Members to accept this Bill and pass it. When the question of Sthanam Bill in its entirety comes up before the House, it may be decided whether it is to be sent to a Select Committee and further examined."

* SRI M. P. GOVINDA MENON :—" I thank hon. Members and the Hon. Minister for Law for the warm support given to this Bill. I thank my friend, the Deputy Leader of the Opposition, for intervening in the debate so that the position may be made clear. One point I want to stress is that this is not a Bill to abolish sthanams. Even after the passing of this Bill, there will be innumerable sthanams and sthanam property in the district

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of Malabar. I understand that the notice given in the Legislative Assembly for abolishing the entire sthanam is going to be published soon and that is the time for my friend, Dr. John, to interfere and say whether such a Bill is necessary. As the Hon. Minister for Law puts it, this Bill pertains to a particular property. Whether that property should be shared by all members, is a simple matter and that need not be complicated by introducing the question of sthanam being abolished or not abolished. This Bill makes mention of three clauses. Those clauses must be considered by the courts' interpretations. After all, we are not intervening with the judiciary. We are only laying down the laws which must be interpreted and adjudged by the law courts. There is nothing wrong in it. I once more thank all with reference to hon. Members for extending their support to this Bill and also the Government for giving facility to bring forward this Bill."

MR. CHAIRMAN :—" The question is—

'That the Madras Marumakkathayam (Removal of Doubts) Bill, 1955 (L.A. Bill No. 12 of 1955), as passed by the Assembly, be taken into consideration.' "

The motion was carried and the Bill was taken into consideration.

Clauses 2 and 1 were put and carried.

The Preamble was put and carried.

* SRI M. P. GOVINDA MENON :—" Sir, I move—

'*That the Madras Marumakkathayam (Removal of Doubts) Bill, 1955 (L.A. Bill No. 12 of 1955), as passed by the Assembly, be passed.*' "

MR. CHAIRMAN :—" Motion moved—

'That the Madras Marumakkathayam (Removal of Doubts) Bill, 1955 (L.A. Bill No. 12 of 1955), as passed by the Assembly, be passed.' "

* DR. V. K. JOHN :—" Now that I find that the Government have an intention to bring in a more comprehensive Bill, I would only request them to expedite the introduction of that comprehensive Bill because the present Bill, that is now being passed into law, is to multiply litigation and more so, costly and vexatious litigation. Government should immediately bring in a comprehensive legislation which would be beneficial to all concerned and which would be welcomed by one and all. I hope that they would bring in such a comprehensive legislation as early as possible." 4–20 p.m.

* SRI M. P. GOVINDA MENON :—" I heartily endorse the observations made by Dr. V. K. John. I wish the Government would bring forward a comprehensive Bill very soon, so far as the 'Sthanams' in Malabar are concerned."

MR. CHAIRMAN :—" The question is—

' That the Madras Marumakkathayam (Removal of Doubts) Bill, 1955 (L.A. Bill No. 12 of 1955), as passed by the Assembly, be passed.' "

The motion was carried and the Bill was passed.

VII.—ANNOUNCEMENT BY THE HON. THE CHAIRMAN.

MR. CHAIRMAN :—" I wish to announce to the House that under rule 190 of the Madras Legislative Council Rules, a copy of the amendment made to the Madras Legislative Council Rules, and which was passed by this House to-day, has been signed by me."

VIII.—DRAFT SECOND FIVE-YEAR PLAN FOR THE STATE OF MADRAS.

* THE HON. SRI M. BHAKTAVATSALAM :—"' Sir, I move—

' *That the Draft Second Five-Year Plan for the State of Madras be taken into consideration.*'

" The question of the Second Five-Year Plan for Madras State has been under the active consideration of Government for about six months and certain papers prepared by the Planning Commission's Panel of Economists, the Central Statistical Organization and the Indian Statistical Institute as well as the Preliminary Draft Proposals for the Plan sent to the Planning Commission have been circulated to the Members of the Legislature already. The First Five-Year Plan was largely determined by the conditions prevailing at the time it was framed and its principal objectives were to make India largely self-sufficient in food and to hold inflationary tendencies in check. It may be said that there has been a considerable measure of success in achieving these objectives; but there are various aspects of development on which adequate attention could not be laid in that Plan. The Second Five-Year Plan will essentially be a people's Plan reflecting their needs and aspirations and it is with this end in view that the Government have taken up the preparation of District Plans. These Plans will provide for the elementary requirements of the villagers in the matter of primary education, medical help, drinking water-supply, communications, agricultural facilities and village co-operatives. The Plans evolved at the State level have been designed to secure a balanced development for the State keeping in view the various targets proposed for the whole of India in regard to increase in production in different fields and the expansion of social services, in order to bring about a 25 per cent increase in national income and to provide employment opportunities for about 11 to 12 million persons. An analysis of the expenditure proposed for various sectors of development has been made in paragraph 9 of the ' Paper placed on the table of the House ' yesterday and the figures will show the greater emphasis to be given during the Second Five-Year Plan period to small scale and